CROWN INVESTMENTS CORPORATION

OF SASKATCHEWAN

Report to the

Crown Corporations Committee

Respecting CIC Subsidiary Crown Corporation

Conflict of Interest

Guidelines

December 1999

102-06642/

TABLE OF CONTENTS

1. Introduction 1

2. Application 1

3. Definition 1

4. General Rule 2

5. Employer Responsibilities 2

6. Employee Responsibilities 2

7. Fiduciary Obligations of Senior Management 3

8. Post Employment Restrictions 4

9. Legal/Policy Requirements 4

10. Specific Conflict of Interest Guidelines 5

    (a) Relationships with Outsiders
    (b) Insider Information
    (c) Business Transactions with the Corporation
    (d) Gifts or Benefits Designed to Influence Behaviour
    (e) Insider Trading
    (f) Business Transactions with Outside Firms
    (g) Outside Employment and Other Activities
    (h) Competing Businesses
    (i) Preferential Treatment
    (j) Political Activity
    (k) Corporate Property

11. Compliance Measures 6

    (a) Disclosure and Approvals
    (b) Enforcement
    (c) Dispute Resolution Mechanisms

12. Conclusion 7

    Reference Material 8

1. INTRODUCTION

On October 15, 1998, the Standing Committee on Crown Corporations released the Channel Lake Inquiry final report. The final report outlined the events surrounding the acquisition, management and sale of Channel Lake and resulted in a critical examination of the governance model that existed at that time for the Crown sector. The Committee made 22 recommendations to address issues raised through the inquiry. Recommendation 21 of the report reads as follows:

> **Recommendation 21**
>
> **It is recommended that the Crown Corporations and Government of Saskatchewan require conflict of interest guidelines for senior employees both during their years of service and upon leaving the public service.**

The Recommendation speaks to Crown Corporations requiring Conflict of Interest guidelines. When gathering information for this report, it became apparent that all of the Crowns had Conflict of Interest Guidelines. As a result, Crown Investments Corporation (CIC) undertook to review existing industry standards and benchmark current Conflict of Interest guidelines in the Crown sector to ensure they are comprehensive and consistent with best practices.

9. APPLICATION

Conflict of Interest guidelines assist employees to avoid situations that place them in a real or perceived conflict of interest. Due to the variety and complexity of activities performed by Crown Corporations, it is not possible to produce a list of prohibited activities that cover every circumstance an employee may encounter. As a result, this document sets out the key elements which should be addressed in Conflict of Interest guidelines for all employees of Crown corporations and designated subsidiary Crown corporations.

3. DEFINITION

A conflict of interest is any situation in which the personal activities, interests or relationships of an employee:

(i) result or appear to result in:
- (a) an interference with the objective exercise of the employee's duties in the Corporation; or
- (b) a gain or an advantage by virtue of the employee's position in the Corporation; or

(ii) negatively impact the Corporation's reputation in the community.

4. GENERAL RULE

The conduct of Crown corporation employees is often subject to intense public scrutiny. The public has a right to expect such employees, particularly employees in senior positions, to adhere to the highest standards of business conduct with respect to conflicts of interest.

5. EMPLOYER RESPONSIBILITIES

Chief among the employer's responsibilities are leadership and communication. If the leadership does not support, adhere to and communicate the rules it establishes, it cannot expect employees to do so.

It is important that employees understand the conduct and behavior that the employer expects of them. Communicating appropriate policies and procedures can help eliminate unacceptable workplace behavior. Conflict of Interest guidelines serve as a communication mechanism to inform employees of situations that may result in a real or perceived conflict of interest, and to make it clear that employees are to avoid these types of situations.

6. EMPLOYEE RESPONSIBILITIES

In general, employees of Crown corporations have a responsibility to:

- avoid situations where a conflict of interest may arise;
- act with honesty so as to enhance public confidence and trust in the integrity, objectivity and impartiality of the Corporation;
- perform their official duties in a manner that will bear the closest public scrutiny; and
- comply with any relevant legislation or guidelines.

All employees owe their employers a general duty of good faith and fidelity, which is an implied term of the employment contract as a matter of law. The duty applies equally to ordinary employees as it does to senior management.

Employees should be familiar with Corporate Conflict of Interest guidelines to ensure that they are aware of the employer's expectations, and know which behaviors are unacceptable and which potentially risky situations to avoid.

7. FIDUCIARY OBLIGATIONS OF SENIOR MANAGEMENT

A senior manager (those individuals charged with the function of managing the Corporation at the highest levels, i.e., General Managers and above), has a further duty of good faith towards his or her employer, with obligations of fidelity owed by senior management being equal to that owed by directors. A senior manager holding a position of trust and confidence with the employer, has the duty of utmost good faith and must act in the best interests of the Corporation.

In this context, a senior manager, being a fiduciary, owes certain obligations to the Corporate employer, which are summarized as follows:

- not to take the benefit of a corporate opportunity or obtain for themselves a business opportunity that belongs to the Corporation;
- not to act against the interests of the Corporation;
- to avoid placing themselves in a possible or potential conflict of interest;
- not to take certain profits or reap a personal gain;
- not to unfairly compete after departure;
- to make full and complete disclosure of any material information.

These fiduciary obligations continue after employment has ended and do not cease merely because of resignation or dismissal. A breach of a fiduciary obligation after termination of the employment relationship will constitute grounds for action.

The post-employment prohibitions of a fiduciary can be encapsulated into two categories: Corporate opportunity and confidential information. In the context of Corporate opportunity, a fiduciary employee is prohibited from exploiting a corporate or business opportunity that rightfully belongs to the Corporation. The fiduciary is prohibited from capturing, on the basis of his or her former position, a developing or existing Corporate opportunity.

In the context of confidential information, an employer must balance its need to protect confidential information with an employee's ability to compete with his or her former employer. A fiduciary employee must not improperly use trade secrets or confidential information belonging to the employer. As well, the fiduciary employee cannot directly solicit customers of the former employer nor can he or she use knowledge of the particulars of the relationship between the Corporation and its customers. Likewise, a fiduciary is prohibited from using any information that will assist in capturing an opportunity. It is unlawful for a senior manager on departure to unfairly use Corporate information acquired in his or her capacity as a fiduciary for personal gain.

The application of post-employment fiduciary obligations is limited to a reasonable period of time. What is reasonable depends on the particular facts of each case, and will be influenced by factors such as the nature of the position held and the nature of the opportunity or information.

8. POST EMPLOYMENT RESTRICTIONS

An individual can only be in a conflict where the individual is serving two masters (i.e., the employer and the employee). Once the employment relationship is terminated, and the contract is at an end, the employee is no longer in a potential conflict position. The fiduciary obligations that follow a former employee are those associated with the status of the employee. In this regard, remedies available to the employer (short of a contractual undertaking) could include actions for breach of fiduciary duty or breach of confidence.

A Crown corporation that wants to go beyond communicating fiduciary obligations to senior management and attach additional post-employment restrictions, should do so by way of contract, outside of the Corporation's conflict of interest guidelines. Therefore, we are not recommending inclusion of post-employment restrictions in Crown Conflict of Interest guidelines.

9. LEGAL/POLICY REQUIREMENTS

The conduct of officers of Crown corporations and designated subsidiary Crown corporations is guided by the provisions of *The Crown Corporations Act*, 1993 (part VI, Section 47, relates specifically to conflict of interest matters), or *The Business Corporations Act*.

If the employee is a provincial public servant, the individual will also be bound by the conflict of interest rules prescribed in the Regulations under *The Public Service Act* and the *Conflict of Interest Guidelines* for Saskatchewan Public Employees.

Corporate officers must adhere to all other applicable Saskatchewan legislation. In the event of any conflict between legislative requirements and a Crown's policy, the legislative requirements will prevail.

10. SPECIFIC CONFLICT OF INTEREST GUIDELINES

Research suggests that Corporate Conflict of Interest guidelines should address at least the following specific situations:

(a) direct or indirect interest in or relationships with third parties, where personal benefit or gain may be implied or construed due to the employee's actual or potential power to influence dealings between the Corporation and a third party;

(b) using confidential information gained from or on behalf of the Corporation to benefit the employee, the employee's relatives, friends or business associates;

(c) engaging, for personal gain, in a business transaction with the employee's Corporation in addition to the employee's regular job;

(d) accepting gifts, gratuities, honorariums or other personal benefits or advantages designed or perceived to influence the performance of an employee's duties and/or business transactions;

(e) using inside information to trade securities of any organization with which the employee's Corporation has dealings, except when done in compliance with laws governing insider trading;

(f) causing the Corporation to enter into a business transaction with a third party in which the employee or a near relative is involved;

(g) any outside employment, or prospect of outside employment, that creates a real, potential or apparent conflict of interest, including outside employment that impedes the employee's ability to meet their responsibilities to the Corporation, outside employment that is forbidden by legislation or outside employment that intrudes on the time, attention and energies normally applied to the Corporation, unless such employment has been specifically authorized by the employee's supervisor;

(h) avoiding direct or indirect interest in, or relationships with, outside enterprises where personal benefit or gain may be implied or construed (to the employee or the outside enterprise) due to the employee's actual or potential power to influence dealings between the Corporation and an outside enterprise;

(i) the granting of a material benefit, in relation to any official matter involving the Corporation, to family members or friends or to organizations in which the employee, family members or friends have an interest, or the use of the Corporation's name when purchasing goods or services for other than Corporate use, when it could be inferred that the purpose in doing so is to solicit a benefit not customarily available to others;

(j) participation in political activities during working hours or on the Corporation's premises or that otherwise interfere with the employee's official duties; and

(k) the direct or indirect use, or allowing the use, of Corporate property for anything other than officially approved activities.

11. COMPLIANCE MEASURES

The compliance measures in a Conflict of Interest guideline set out the procedural and administrative requirements established to minimize the risk of conflicts of interest, enforce the guidelines, provide for a dispute resolution mechanism and, ultimately, permit the resolution of any conflicts that may arise in favour of the public interest. The following compliance measures should be set out in the Corporate Conflict of Interest guidelines.

(a) Disclosure and Approvals

The Crown corporation or designated Crown subsidiary should clearly communicate to employees the process for disclosing and reporting information which may be, or be perceived as, a conflict of interest. As well, information should be provided to employees regarding the process the Crown corporation/subsidiary uses for reviewing the information received, the individual(s) that will be assessing the information and the next steps in the process.

(b) Enforcement

The consequences of non-compliance should be clearly stated in the guideline. Most guidelines provide that employees who knowingly fail to reveal, or falsely report, prohibited interests or relationships or engage in potentially conflicting activities will be subject to disciplinary action.

(c) Dispute Resolution Mechanisms

To ensure that the guidelines are applied equally and fairly, employees who disagree with an employer's decision that they are in a situation of conflict, should have access to a mechanism to contest that decision.

Unionized employees of the Corporation will normally have access to grievance and arbitration procedures to dispute a decision. While a formal appeal process may not be appropriate for senior managers, safeguards must be in place to ensure that decisions which potentially impact their employment are made appropriately and are subject to at least informal review, if requested.

12. CONCLUSION

As mentioned previously, all CIC Crown corporations have Conflict of Interest Guidelines, either as a stand alone document or as part of the Corporation's broader Code of Business Conduct. These guidelines apply equally to ordinary employees and to senior managers.

In the fall of 1999, CIC requested its subsidiary Crown corporations to review this Report and, where relevant and appropriate to the Corporation, revise their current policies to be consistent with best practice in the area of conflict of interest. All Crowns have reported back to CIC, either confirming compliance with the guidelines or indicating that appropriate revisions have been made to their existing COI guidelines to bring them into compliance.

Respecting fiduciary obligations and post-employment restrictions for senior management, CIC has asked the CEOs of the Crown corporations to address the issue in a manner that best suits their Corporation, and to ensure that all senior officials are aware of their current and post-employment responsibilities. All CEOs have complied with that request.

REFERENCE MATERIAL

In developing this document, a number of publications and Corporate guidelines were reviewed, including:

- Alcan Aluminium Ltd.- Code of Conduct
- B.C. Hydro and Power Authority - IPC Review - Conduct and Conflicts
- Canada Post Corporation - Human Rights and Employment Policies
- City of Regina - Code of Conduct
- Credit Union Central - Conflict of Interest Policy and Guidelines
- Crown Investment Corporation - Conflict of Interest Guidelines
- Crown Life Insurance Company- Agreement of Confidentiality and Conflict of Interest Questionnaire
- Export Development Corporation - Important Information for Directors, Officers and Employees
- Hughes Electronics - Conflict of Interest Guidelines
- Industry Canada - Conflict of Interest Guidelines
- LegalPoint - Conflict of Interest Guidelines
- Nortel Networks Corporation- Conflict of Interest Guidelines
- Office of the Ethics Counsellor - Industry Canada- Conflict of Interest and Post Employment Code
- Oregon State University - Policy on Outside Professional Activities
- Saskatchewan Worker's Compensation Board - Conflict of Interest Policy
- Saskatchewan Opportunities Corporation - Conflict of Interest Policy
- Saskatchewan Public Service Commission - Conflict of Interest Policy
- Saskatchewan Water Corporation - Conflict of Interest Guidelines
- Saskatchewan Transportation Company - Code of Conduct
- Saskatchewan Wheat Pool - Conflict of Interest Policy
- SaskEnergy - Code of Conduct
- SaskPower - Code of Conduct
- SaskTel - Code of Conduct and Conflict of Interest Policy
- Sears Canada Inc. - Conflict of Interest Guidelines
- SGI - Code of Ethics and Standard of Conduct
- Standard Life Assurance Company- Conflict of Interest Guidelines
- University of British Columbia - Conflict of Interest Policy